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Attorneys for Crowley Marine Services, Inc.

**IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF ALASKA**

GARY J. CROCHET,

Plaintiff,

vs.

CROWLEY MARINE SERVICES, INC.

Defendant.

Case No. 3:05-cv-0288-TMB

**MEMORANDUM IN SUPPORT OF
 MOTION TO AMEND ANSWER**

Defendant Crowley Marine Services, Inc. ("Crowley") seeks leave to amend its answer to assert an additional affirmative defense that certain claims by plaintiff are pre-empted by operation of law in accordance with §301 of the Labor Relations Management Act, 29 U.S.C. §185, and that these claims are barred by the six month statute of limitations which applies to such claims. (A copy of Crowley's proposed amended answer is attached as Exhibit A. See Affirmative Defense 9.) This is the first amendment of its answer sought by defendant Crowley, and since no discovery has yet taken place in this matter,

1 amendment of the answer at this early date will not result in prejudice, and will
2 facilitate the determination of this case on its merits.¹

3 Under Fed.R.Civ.P. 15(a), leave of court to amend a pleading “shall be
4 freely given when justice so requires.” Fed.R.Civ.P. 15(a); Foman v. Davis, 371
5 U.S. 178, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962). In Foman, the Supreme Court held
6 that the mandate of Rule 15(a) is to be heeded, and a party should be afforded the
7 opportunity to test its claims or defenses on the merits in the absence of any
8 undue delay, bad faith or dilatory motive, or repeated failure to cure any
9 deficiencies by amendments previously allowed. Likewise, amendment should be
10 granted in the absence of undue prejudice to an opposing party, or in the absence
11 of futility of amendment. The courts have held that this policy is “to be applied
12 with extreme liberality.” Morongo Band of Mission Indians v. Rose, 893 F.2d
13 1074, 1079 (9th Cir. 1990); Owens v. Keiser Foundation Health Plan, Inc., 244
14 F.3d 708, 712 (9th Cir. 2001); Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d
15 1048, 1051 – 52 (9th Cir. 2003). None of the exceptions identified by the Supreme
16 Court in Foman apply in this case, and the proposed amendment should be
17 allowed.

18 It is the consideration of prejudice to an opposing party which carries
19 the greatest weight in consideration of whether to allow an amendment under
20 Fed.R.Civ.P. 15(a). Eminence Capital, *supra*, at 1052. Absent a strong showing
21 of prejudice or any of the other remaining Foman factors, there exists a
22

23 ¹ The parties have agreed in their Scheduling and Planning Conference Report
24 filed on February 23, 2006 that the cutoff date for motions to amend their
25 pleadings would be set according to the D.Ak. LR 16.1(c) which is 60 days after
26 the Pretrial Scheduling Order is entered by the Court. Thus, the present motion
has been filed well within any deadline for amendment of pleadings.

1 presumption under Rule 15(a) in favor of granting leave to amend. Id.
2 Defendant's motion to amend its answer in this case will not prejudice the
3 plaintiff in this matter. The requested amendment has been presented early in
4 the case and before commencement of any discovery by the parties. There is
5 absolutely no evidence of any "undue delay, bad faith or dilatory motive" on the
6 part of the defendant, and this is the first amendment sought by Crowley.

7 Defendant respectfully requests that its proposed amendment to its
8 answer be allowed.

9 DATED at Anchorage, Alaska this 3rd day of April, 2006.

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11 KEESAL, YOUNG & LOGAN
Attorneys for Crowley Marine Services, Inc.

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17 CERTIFICATE OF SERVICE:

18 I HEREBY CERTIFY THAT I CAUSED TO
19 BE SERVED A TRUE AND CORRECT COPY
OF THE FOREGOING THIS 3RD DAY OF
20 APRIL, 2006 TO:

21 Via Mail

22 Heather L. Gardner
Law Office of Michael J. Patterson
23 810 W. 2nd Avenue
Anchorage, AK 99501

24 s/ DOUGLAS R. DAVIS
25
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